

By: Harris

S.B. No. 351

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of persons who repossess motor vehicles;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Occupations Code, is amended by adding Chapter 902 to read as follows:

CHAPTER 902. REPOSSESSION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 902.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(4) "Lender" means:

(A) a state or national bank;

(B) a state or federal savings and loan association or savings bank;

(C) a credit union; or

(D) a person that holds a license issued under Chapter 348, Finance Code.

(5) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

1 (6) "Repossession" means the recovery of a motor
2 vehicle that has been sold or leased under a security agreement that
3 contains a repossession clause by an individual authorized by the
4 legal owner, lienholder, or lessor to recover the motor vehicle or
5 to collect payment in lieu of recovery.

6 (7) "Repossession agent" means an individual who
7 engages in a repossession for consideration.

8 (8) "Repossession company" means a business entity
9 that engages in the business of performing, or advertises that the
10 business entity performs, repossessions for consideration.

11 Sec. 902.002. APPLICABILITY OF OTHER LAW. Chapter 51
12 applies to this chapter, including the power to impose an
13 administrative sanction, assess an administrative penalty, or seek
14 a civil penalty, for a violation of this chapter or a rule or order
15 adopted or entered under this chapter.

16 [Sections 902.003-902.050 reserved for expansion]

17 SUBCHAPTER B. GENERAL POWERS AND DUTIES

18 Sec. 902.051. RULES. The executive director may adopt
19 rules necessary to administer this chapter.

20 Sec. 902.052. FEES. The commission may by rule set fees in
21 amounts reasonable and necessary to administer this chapter.

22 Sec. 902.053. DIRECTORY OF LICENSE HOLDERS. (a) The
23 department shall annually prepare a directory of license holders.

24 (b) The department shall provide the directory to the public
25 on request without charge.

26 (c) The department may comply with this section by
27 publishing the directory on-line.

1 Sec. 902.054. INVESTIGATIONS. (a) The department may
2 examine:

3 (1) a record maintained under this chapter; or

4 (2) a record or object the department determines is
5 necessary to conduct a complete investigation.

6 (b) To administer this chapter, the department may question
7 a person who:

8 (1) is associated with the business of a license
9 holder; or

10 (2) claims that the person was negatively affected by
11 a violation of this chapter committed by a license holder.

12 Sec. 902.055. AUDIT. The department may periodically
13 audit the business records of a license holder.

14 Sec. 902.056. PROPER TOWING EQUIPMENT. With the advice of
15 the Texas Department of Transportation and the Department of Public
16 Safety, the executive director shall adopt rules as necessary to
17 ensure that a vehicle used for a repossession by a license holder is
18 a tow truck suitable in terms of safety, considering factors such as
19 size, towing capacity, or the use of other equipment.

20 [Sections 902.057-902.100 reserved for expansion]

21 SUBCHAPTER C. LICENSE REQUIREMENTS

22 Sec. 902.101. LICENSE REQUIRED. (a) A person may not
23 engage in a repossession for consideration unless each individual
24 who engages in the recovery holds a repossession agent license.

25 (b) A person may not advertise that the person performs
26 repossessions unless the person holds a repossession agent or
27 repossession company license.

1 (c) A person may not hire a person to engage in a
2 repossession unless the person hired holds a license issued under
3 this chapter.

4 Sec. 902.102. LICENSE CLASSIFICATIONS. The executive
5 director shall issue a repossession agent or repossession company
6 license to an eligible applicant.

7 Sec. 902.103. LICENSE APPLICATION. (a) A license
8 applicant must submit an application on a form prescribed by the
9 department.

10 (b) The application must specify the class of license for
11 which the applicant is applying.

12 (c) An application for a repossession agent license must be
13 accompanied by:

14 (1) the application fee; and

15 (2) the examination fee.

16 (d) An application for a repossession company license must
17 be accompanied by:

18 (1) the application fee;

19 (2) the license number of each employee who holds a
20 repossession agent license; and

21 (3) a copy of the current sales tax permit issued to
22 the applicant by the comptroller under Chapter 151, Tax Code, or, if
23 the department determines that technology allows, the applicant may
24 submit the applicant's tax identification number to the department
25 for submission by the department to the comptroller for electronic
26 verification.

27 (e) The department shall deny an application provided under

1 Subsection (d) if the applicant's sales tax permit is canceled,
2 suspended, or revoked under Subchapter F, Chapter 151, Tax Code.

3 Sec. 902.104. ELIGIBILITY REQUIREMENTS FOR REPOSSESSION
4 AGENT LICENSE; BACKGROUND CHECK. (a) An applicant for a
5 repossession agent license must be at least 18 years old.

6 (b) The department shall conduct a criminal background
7 check on the applicant as authorized under Chapter 411, Government
8 Code.

9 (c) The applicant is not eligible for a license if the
10 applicant has been finally convicted of a felony or misdemeanor
11 that directly relates to the duties and responsibilities of the
12 licensed occupation.

13 (d) The executive director may deny an application if the
14 applicant previously held a repossession agent license and the
15 license was revoked.

16 (e) Except as provided by Subsection (c), Chapter 53 applies
17 to this chapter.

18 Sec. 902.105. EXAMINATION FOR REPOSSESSION AGENT LICENSE.

19 (a) The executive director shall require an examination for a
20 repossession agent license.

21 (b) The executive director shall prescribe the method and
22 content of the examination and shall set compliance requirements
23 for the examination.

24 (c) The examination shall be offered at least annually or
25 more frequently as determined by the executive director.

26 (d) The examination shall be offered at various locations in
27 this state as determined by the executive director.

1 Sec. 902.106. EXAMINATION RESULTS. (a) Not later than the
2 30th day after the date on which a person takes a licensing
3 examination under this chapter, the department shall notify the
4 person of the results of the examination.

5 (b) If the examination is graded or reviewed by a testing
6 service:

7 (1) the department shall notify the person of the
8 results of the examination not later than the 14th day after the
9 date the department receives the results from the testing service;
10 and

11 (2) if notice of the examination results will be
12 delayed for longer than 90 days after the examination date, the
13 department shall notify the person of the reason for the delay
14 before the 90th day.

15 (c) The department may require a testing service to notify a
16 person of the results of the person's examination.

17 (d) If requested in writing by a person who fails a
18 licensing examination administered under this chapter, the
19 department shall furnish the person with an analysis of the
20 person's performance on the examination.

21 Sec. 902.107. ISSUANCE OF LICENSE; TERM. (a) On payment of
22 the license fee, the department shall issue the appropriate license
23 to an applicant who:

24 (1) meets the requirements of this subchapter;

25 (2) provides evidence of any insurance coverage
26 required by the executive director in accordance with this chapter;

27 and

1 (3) passes the examination, if the application is for
2 a repossession agent license.

3 (b) A license is valid for one year from the date of
4 issuance.

5 Sec. 902.108. RULES REGARDING RENEWAL. The executive
6 director may adopt rules regarding the renewal of a license,
7 including rules requiring confirmation of the continued
8 eligibility of the license holder before renewal.

9 Sec. 902.109. LICENSE EXPIRATION AND RENEWAL. (a) A person
10 who is otherwise eligible to renew a license may renew an unexpired
11 license by paying the required renewal fee to the department before
12 the expiration date of the license. A person whose license has
13 expired may not engage in activities that require a license until
14 the license has been renewed.

15 (b) A person whose license has been expired for 90 days or
16 less may renew the license by paying to the department a renewal fee
17 that is equal to 1-1/2 times the normally required renewal fee.

18 (c) A person whose license has been expired for more than 90
19 days but less than one year may renew the license by paying to the
20 department a renewal fee that is equal to two times the normally
21 required renewal fee.

22 (d) A person whose license has been expired for one year or
23 more may not renew the license. The person may obtain a new license
24 by complying with the requirements and procedures, including the
25 examination requirements, for obtaining an original license.

26 (e) A person who was licensed in this state, moved to
27 another state, and is currently licensed and has been in practice in

1 the other state for the two years preceding the date of application
2 may obtain a new license without reexamination. The person must pay
3 to the department a fee that is equal to two times the normally
4 required renewal fee for the license.

5 (f) Not later than the 30th day before the date a person's
6 license is scheduled to expire, the department shall send written
7 notice of the impending expiration to the person at the person's
8 last known address according to the records of the department.

9 Sec. 902.110. BOND AND INSURANCE REQUIREMENTS. The
10 executive director by rule shall set bond and insurance
11 requirements for license holders.

12 Sec. 902.111. CONTINUING EDUCATION REQUIREMENTS FOR
13 REPOSSESSION AGENTS. (a) The executive director by rule shall
14 require continuing education as a condition for renewal of a
15 repossession agent license.

16 (b) The continuing education requirements may not exceed
17 four hours annually.

18 Sec. 902.112. CONTINUING EDUCATION PROVIDERS AND COURSE
19 APPROVAL. (a) The executive director by rule shall recognize,
20 prepare, or administer continuing education programs for its
21 license holders.

22 (b) The executive director by rule shall recognize and
23 approve continuing education providers.

24 Sec. 902.113. RECIPROCITY; WAIVER OF LICENSE REQUIREMENT.
25 The executive director may waive any prerequisite to obtaining a
26 license for an applicant after reviewing the applicant's
27 credentials and determining that the applicant holds a license

1 issued by another jurisdiction that has licensing requirements
2 substantially equivalent to those of this state.

3 Sec. 902.114. PROVISIONAL REPOSSESSION AGENT LICENSE. (a)
4 The executive director may issue a provisional repossession agent
5 license to an applicant currently licensed in another jurisdiction
6 who seeks a license in this state and who:

7 (1) has been licensed in good standing as a
8 repossession agent for at least two years in another jurisdiction,
9 including a foreign country, that has licensing requirements
10 substantially equivalent to the requirements of this chapter;

11 (2) has passed a national or other examination
12 recognized by the executive director relating to repossession
13 procedures and requirements; and

14 (3) is sponsored by a person licensed by the
15 department under this chapter with whom the provisional license
16 holder will practice during the time the person holds a provisional
17 license.

18 (b) The executive director may waive the sponsorship
19 requirement under Subsection (a)(3) for an applicant if the
20 executive director determines that compliance with that subsection
21 would be a hardship to the applicant.

22 (c) A provisional license is valid until the date the
23 department approves or denies the provisional license holder's
24 application for a repossession agent license.

25 (d) The executive director shall issue a repossession agent
26 license under this chapter to a provisional license holder if:

27 (1) the provisional license holder is eligible to be

1 licensed under Section 902.113 or passes the part of the
2 examination under Section 902.105 that relates to the applicant's
3 knowledge and understanding of the laws and rules of this state
4 relating to repossession; and

5 (2) the executive director verifies that the
6 provisional license holder satisfies any other applicable
7 licensing requirements under this chapter.

8 (e) The executive director must approve or deny a
9 provisional license holder's application for a repossession agent
10 license not later than the 180th day after the date on which the
11 provisional license is issued. The executive director may extend
12 the 180-day period if the results of an examination have not been
13 received by the department before the end of that period.

14 (f) The commission may establish a fee for provisional
15 licenses in an amount reasonable and necessary to cover the cost of
16 issuing the license.

17 [Sections 902.115-902.150 reserved for expansion]

18 SUBCHAPTER D. OPERATION OF REPOSSESSION COMPANY; FACILITY

19 REQUIREMENTS

20 Sec. 902.151. DEFINITION. In this subchapter, "storage
21 facility" means the area where a repossession company stores a
22 repossessed motor vehicle.

23 Sec. 902.152. OFFICE; HOURS. A repossession company shall
24 maintain a permanent office with regular office hours of not less
25 than eight hours per day Monday through Friday, excluding legal
26 holidays, during which a person may claim personal property from a
27 repossessed motor vehicle.

1 Sec. 902.153. STORAGE OF REPOSSESSED MOTOR VEHICLE. A
2 repossession company shall store a repossessed motor vehicle inside
3 a storage facility that complies with the requirements of this
4 subchapter.

5 Sec. 902.154. ENCLOSURE AND SECURITY AT FACILITY. (a) Each
6 storage facility shall be:

7 (1) completely enclosed by a fence at least six feet
8 high; and

9 (2) locked when the license holder or an employee of
10 the license holder is not at the facility.

11 (b) A repossession company shall secure a repossessed motor
12 vehicle to prevent theft of the vehicle or its contents, including
13 locking doors, closing windows and hatchbacks, and raising or
14 covering convertible tops.

15 Sec. 902.155. FACILITY SURFACE. A storage facility must
16 contain an all-weather surface such as concrete, asphalt,
17 black-top, stone, macadam, limestone, iron ore, gravel, shell, or
18 caliche. The surface must enable the safe and effective movement of
19 the vehicle on all portions of the lot, both under the vehicle's own
20 power and under tow, at all times and regardless of weather
21 conditions.

22 Sec. 902.156. FACILITY LIGHTING. A repossession company
23 shall maintain lighting at the storage facility sufficient to allow
24 inspection of a repossessed motor vehicle for damage at the time of
25 the vehicle's release, including at least a 250 watt light bulb for
26 each quarter acre of storage area.

27 Sec. 902.157. FACILITY SIGNS. A repossession company shall

1 post a clearly visible and readable sign at the facility's main
2 entrance. The sign shall:

3 (1) use letters at least two inches in height, with
4 contrasting background;

5 (2) be visible from at least 10 feet;

6 (3) contain the street address of the facility; and

7 (4) contain the repossession company's name, address,
8 phone number, office hours, and license number.

9 Sec. 902.158. SHARING OF STORAGE FACILITY PROHIBITED. A
10 repossession company may not share a storage facility with another
11 repossession company.

12 Sec. 902.159. ENTRY OF TOW TRUCKS. A repossession company
13 may not permit a tow truck to enter its storage facility unless the
14 tow truck complies with the rules adopted under Section 902.056.

15 [Sections 902.160-902.200 reserved for expansion]

16 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

17 Sec. 902.201. USE OF PROPER TOWING EQUIPMENT. A
18 repossession agent may not engage in a repossession unless the tow
19 truck used by the agent complies with department rules regarding
20 safety.

21 Sec. 902.202. USE OF FORCE; BREACH OF THE PEACE. A
22 repossession agent may not use force or breach the peace when
23 engaging in a repossession.

24 Sec. 902.203. EMPLOYMENT OR HIRING OF REPOSSESSION AGENT.

25 (a) A licensed repossession agent may not engage in a repossession
26 unless the agent is hired or employed by a licensed repossession
27 company or a lender.

1 (b) A person may not hire or employ a licensed repossession
2 agent unless the person is a licensed repossession company or a
3 lender.

4 Sec. 902.204. DUTY TO REPORT REPOSSESSION TO LAW
5 ENFORCEMENT. Not later than two hours after engaging in a
6 repossession, a repossession agent shall report the repossession to
7 the police department of the municipality in which the recovery
8 occurred or, if the recovery was not located in a municipality
9 having a police department, to the sheriff of the county in which
10 the recovery occurred. The report must include:

11 (1) the license number and telephone number of each
12 repossession agent engaging in the repossession;

13 (2) the location at which the repossession occurred
14 and the location at which the motor vehicle is stored; and

15 (3) a description of the motor vehicle recovered,
16 including identification information such as a vehicle
17 identification number and the state and number of a license plate.

18 [Sections 902.205-902.250 reserved for expansion]

19 SUBCHAPTER F. ENFORCEMENT

20 Sec. 902.251. CEASE AND DESIST ORDERS. The department may
21 issue a cease and desist order.

22 Sec. 902.252. CIVIL PENALTIES. (a) Except as provided by
23 Subsection (b), a person who violates this chapter is subject to a
24 civil penalty under Section 51.352 of not less than \$2,000 for the
25 first violation and not less than \$4,000 for each subsequent
26 violation.

27 (b) A repossession company or lender who violates this

1 chapter is subject to a civil penalty of not less than \$4,000 for
2 the first violation and not less than \$8,000 for each subsequent
3 violation.

4 Sec. 902.253. CRIMINAL PENALTY. (a) A person commits an
5 offense if the person knowingly engages in a repossession without
6 holding a license issued under this chapter.

7 (b) Each repossession of a motor vehicle constitutes a
8 separate offense.

9 (c) An offense under this section is a Class B misdemeanor.

10 SECTION 2. Section 411.093(a), Government Code, is amended
11 to read as follows:

12 (a) The Texas Department of Licensing and Regulation is
13 entitled to obtain from the department criminal history record
14 information maintained by the department that relates to a person
15 who is:

16 (1) an applicant for a license under:

17 (A) Chapter 902, Occupations Code; or

18 (B) Chapter 2052, Occupations Code [~~the Texas~~
19 ~~Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil~~
20 ~~Statutes)]~~; or

21 (2) the holder of a license under those chapters [~~that~~
22 ~~Act~~].

23 SECTION 3. (a) A person is not required to obtain a license
24 under Subchapter C, Chapter 902, Occupations Code, as added by this
25 Act, until September 1, 2004.

26 (b) The executive director of the Texas Department of
27 Licensing and Regulation shall adopt rules as required under

1 Chapter 902, Occupations Code, as added by this Act, not later than
2 June 1, 2004.

3 SECTION 4. (a) Except as provided by Subsection (b) of
4 this section, this Act takes effect September 1, 2003.

5 (b) Subchapters D, E, and F, Chapter 902, Occupations Code,
6 as added by this Act, take effect September 1, 2004.